United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

Docket No. H-75-138

76-1181

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THOMAS WHITE,

Appellant

V.

UNITED STATES OF AMERICA,

Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR THE APPELLANT

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STATEMENT OF THE CASE

The appellant was indicted on three different counts of violating Title 18, United States Code, Section 2113(a), bank robbery. On November 10, 17 and 24, 1975, at the United States District Court, District of Connecticut, before the Honorable Judge T. Emmet Clarie presiding, there was a hearing on a motion to suppress any and all statements, written or oral, made by the appellant to any law enforcement officer or his agent on either July 20 or July 21, 1975 in connection with the aforementioned alleged criminal violations.

Judge Clarie, after hearing the evidence ruled against the appellant, stating that the admissions or confessions obtained on said dates could be admitted into evidence. A trial was commenced on March 9, 1976 at which time the statements of the appellant were admitted into evidence over the objections of the appellant. After said admission, the appellant withdrew his plea of not guilty and pleaded guilty to two counts of violating Title 18, United States Code, Section 2113(a).

The appellant, appellee and the Court all understood and agreed that the plea of guilty was made with the understanding that the appellant could and would appeal the issue dealing with the admissibility of said statements. Appellant stated on record that had the confessions not been admitted into evidence, he would not have pleaded guilty.

QUESTIONS PRESENTED

Whether the statements, written or oral, obtained from appellant by law enforcement personnel or their agents, were done so in violation of the rights offered a person by the Fourth, Fifth, Sixth and Fourteenth Amendments of the Federal Constitution in that the statements were coerced and they were made without counsel present, without adequate warning of his rights and at a time during which he was undergoing great mental strains and physical pain, having been incarcerated for a period of time and undergoing withdrawal from the use of heroin.

STATEMENT OF FACTS

1. On or about June 24, 1975 the Connecticut Bank and Trust Company at 2775 Main Street, Hartford, Connecticut was robbed of the sum of $2,991.75. (App. p. 1)

2. On July 10, 1975, the Connecticut Bank and Trust Company at 2775 Main Street, Hartford, Connecticut was robbed of the sum of $3,067.94. (App. p. 1)

3. The appellant, who was 19 years old, has an eighth grade education; he has never held a job. (App. p. 46)

4. On July 20, 1975, the appellant was arrested by the Hartford police and brought to their headquarters as a result of several outstanding warrants lodged against him. (App. p. 32)

5. Prior to the appellant's arrest, he had several conversations with Edgar Campbell of the Hartford Police Department. During the conversations the appellant explained to officer Campbell that he, the appellant, was sick; that he was or would be undergoing withdrawal of heroin. (App. pp. 64-78)

6. Officer Campbell testified that at least on five occasions prior to his surrender, the appellant asked that a doctor be made available when he turned himself into the police. (App. pp. 64-78)

7. The appellant, who had been a heavy user of heroin (App. pp.69-70) explained to Officer Campbell that his supply of heroin was almost exhausted and that by Sunday, July 20, 1975, the appellant would be feeling the effect of withdrawal from heroin. (App. pp. 69-70) Officer Campbell explained to the appellant that a doctor would be made available to him. (App. pp. 69-70)

8. Prior to July 20, the appellant had gone for a period of time without any significant food or sleep. (App. pp. 51-52) On July 20, the appellant surrendered to police and was taken to the station at about 5:00 p.m. (App. p. 53)

9. Officers Edgar and Jesse Campbell made the arrest and commenced questioning the appellant at 5:00 p.m. about the two holdups at the Connecticut Bank and Trust Company (CBT). Appellant was not represented by counsel during the entire questioning. (App. pp. 36-38) The appellant had yet to be arraigned before a magistrate.

10. Officers Jesse and Edgar Campbell knew that the appellant was a heroin user at the time that they were questioning him. (App. p. 40)

11. During the interview which resulted in confessions concerning the bank robberies at CBT, the appellant asked to see a doctor; none was provided until after he

signed the confessions. (App. p. 35)

11a. Specifically, during the questioning of detective Jesse L. Campbell by the United States Attorney concerning the timing of the request to see a doctor, the following discussion transpired: (See App. p. 35)

(U.S. Attorney) Q. Did he ever indicate he was on drugs, or addicted to drugs?

(Detective Campbell) A. Yes, sir.

Q. When did that occur?

A. I don't recall exactly. He did indicate to us that he had been using heroin.

Q. After seven o'clock did he ever ask for a doctor?

A. Yes, sir.

Q. Do you recall what time that occurred?

A. I don't recall the time, sir, but somewhere near the end of the interview, or perhaps after the interview he asked if he could see the doctor.

Q. Do you recall, to the best of your recollection, exactly what words he used?

A. He just stated to us that he would like to see a doctor.

11b. On cross examination Detective Campbell got more specific as to when the appellant asked to see a doctor. (App. pp. 40-40A)

(Defense Counsel) Q. Let me restate that.

Between the time you picked up the defendant, drove him to Bloomfield, drove him down to Morgan Street, questioned him for two hours, and commenced writing this, you cannot recall whether or not the defendant asked to see a doctor; is that a fair statement?

(Detective Campbell) A. He asked to see a doctor.

Q. He asked to see a doctor?

A. Yes, I said I recall him asking for the doctor.

Q. I appreciate that. During the typing or writing of this?

A. Right.

Q. Which occurred after 7:15 that evening?

A. Right.

11c. Judge Clarie elicited from Detective Campbell

the fact that it wasn't the officer's or police department's procedure to stop questioning suspected heroin addicts during the taking of a confession to have them examined by a physician to insure the drug is not adversely affecting the prisoner. This was true even though a physician was scheduled to appear at the lockup shortly. (App. pp. 40-41)

12. The officers stated that the appellant did not appear to them to be undergoing withdrawal from heroin. Yet, Officer Jesse Campbell's description of what signs constituted withdrawal from heroin differred from the medical doctor's, Dr. Louis Tonken, who treated the appellant for that illness within two hours of the confessions. (App. pp.44; 29)

13. The appellant was administered 10 milligrams of Dolophine (Methadone) that same evening, July 20. (See medical entry, App. pp.6,7,28,29 Dr. Tonken, a neutral witness testified that he would not have administered Methadone but for the fact that the appellant exhibited signs of withdrawal from heroin. (App. p. 29) Again, these observations occurred within t[illegible]ours of the appellant signing the confessions by the first non law enforcement person to see the appellant. The appellant testified that prior to his signing the statements on both the 20th of July and the 21st of July, he had had little sleep, food and freedom, from the effects of withdrawal of heroin. (App. p. 53)

14. These facts are supported by another neutral

person, nurse Louise Homicki of the jail's infirmary. She testified that on the day the appellant signed the confessions taken by the F.B.I., implicating himself in the bank robberies, he was admitted to the prison infirmary for treatment of withdrawal of heroin. (App. p. 62) She noted that the records indicated the appellant complained that he was suffering from hot and cold flashes and was vomiting. (See medical reports, App. p. 60) Further, she testified that he was admitted because, in fact, he was undergoing withdrawal from heroin.(App.pp.8,9,10,63) All of the medical testimony is uncontradicted.

15. At the police station on the evening of July 20, 1975, the appellant signed two confessions implicating himself in the bank robberies of June 24 and July 10. (App.p.78B) After signing the confessions the appellant was booked and finally was permitted to make a call. (App. p. 78A)

16. After the booking process, the appellant was locked in a cell at the police station for arraignment on July 21. On the 21st the appellant, who had only slept for three hours, was served breakfast at 7:30 p.m. (App.p. 56) He ate nothing. (App. p. 56) After breakfast he was placed in a cell at the court for arraignment at 10:00 a.m.

17. Before he could be arraigned the appellant was pulled from the courtroom lockup and was brought back to the police department for further questioning and interrogation by both the Hartford Police Department and the F.B.I.

From 9:00 a.m. until noon the appellant was questioned by law enforcement personnel. (App. p. 45) He had no lawyer because he had not been arraigned and the court did not have the opportunity to appoint, as it later would, the public defender. The appellant, after more hours of questioning, signed statements attesting to his guilt in the two bank robberies alluded to earlier, as well as other crimes.

18. The F.B.I. and local police testified that the appellant had been advised of his rights and signed several "waiver" forms. (App. p. 46) The appellant who has a limited education and who had little sleep or food prior to signing the statements of waiver, testified that he did not understand the significance of the term 'waiver'. At the point of signing the forms he was not represented by counsel and was undergoing withdrawal of heroin. (Since his arrest, by definition, the appellant was undergoing withdrawal of heroin; the issue is one of degree.) (App. p. 54)

19. The F.B.I. officer who interrogated the defendant on the 21st also knew the appellant was a heroin user. (App. p. 48) Yet, no effort was made to ascertain whether the appellant had been treated by a physician; whether the appellant was on medication at the time of signing the confessions; whether the effects of any medication

was affecting the appellant's ability to freely and knowingly "waive" his right to remain silent. The F.B.I. agent admitted that he was aware that the night before the appellant had signed statements implicating himself in the robberies of the bank. (App. p. 47) The agent did not even bother to ask the appellant whether he had consumed any drugs within the 48-hour period prior to his signing the confessions, even though he knew the appellant to be an addict. (App. pp. 48-49)

20. No doctor examined the appellant on July 21, 1975, before he gave additional statements to the F.B.I. and local police. (App. p. 80) The appellant stated that he did not ask to see a doctor during interrogation by the F.B.I. because he knew it was a policy of the courts not to have drugs administered to those prisoners being arraigned. (App. p. 57) This observation is again supported by the neutral witness, Dr. Tonken, who also testified that prisoners are not given drugs on the day of court appearances. (App. p. 31)

21. The appellant knew he had to give the local police and the F.B.I. what they were looking for - signed confessions - before he would be permitted to be arraigned; a condition precedent to being treated by a physician for his addiction. (App. p. 54A) Dr. Tonken testified that the failure to properly treat an addict for his addiction

problem (by the use of Methadone) can result in the removal of the addict's mind from reality. (App. pp. 30-31)

22. After the appellant gave the local police and federal authorities the confessions on July 21, 1975, he was permitted to be arraigned before a judge, advised by a magistrate of his rights, appointed counsel and sent to the hospital for his withdrawal problems. (App. p. 62) No explanation was ever given as to why the appellant was not taken before a judge at 10:00 a.m. on July 21, 1975, as scheduled

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ARGUMENT

THE COURT ERRED IN ADMITTING INTO EVIDENCE APPELLANT'S STATEMENTS, WHETHER WRITTEN OR ORAL, IN THAT THEY WERE INVOLUNTARY AND COERCED BECAUSE THEY WERE MADE WHILE THE APPELLANT WAS EXPERIENCING NARCOTICS WITHDRAWAL SYMPTOMS AND THE APPELLANT WAS NOT IN A POSITION TO KNOWINGLY AND INTELLIGENTLY WAIVE HIS FIFTH AMENDMENT RIGHTS TO REMAIN SILENT, TO STOP ANSWERING QUESTIONS AT ANY TIME, OR HIS SIXTH AMENDMENT RIGHT TO COUNSEL, FREE OF CHARGE, IF HE QUALIFIED.

1. It is respectfully submitted that the duty of the constitutional adjudication resting upon this Court requires that the question whether the Due Progress Clause of the Fourteenth Amendment has been violated by admission into evidence of a coerced confession be the subject of an independent determination by this Court. Hayes v. State of Washington, 373 U.S. 503, 515 (1963). Thus, this Court should make its own examination of the record, including the uncontroverted testimony of Dr. Tonken and nurse Homicki.

2. The appellant's statements, written or oral, were not the product of a rational intellect and free will and thus they are constitutionally inadmissible. Blackburn v. State of Alabama, 361 U.S. 199 (1963); Wilson v. United States, 162 U.S. 613.

3. The uncontroverted testimony and records show the appellant to have a limited intelligence, receiving at best an eighth grade education. He was a heavy user of drugs, heroin, and this fact was well known to the local police and F.B.I. agents who interrogated him. They knew that at least since his arrest, he had no access to heroin. (The confessions to the F.B.I. took place approximately 20 hours after his arrest.) The appellant was not represented by counsel. The appellant made no calls until after he signed the first set of confessions Sunday, July 20, 1975.

4. It is also uncontested and admitted by all parties, including the police who interrogated him that before his arrest, on several occasions the appellant asked for assurances that he would be permitted to see a doctor for treatment of heroin withdrawal. Further, during the questioning on the 20th, the appellant once again asked to see a doctor.

5. None of the witnesses dispute the recorded fact that the appellant, who could have been arraigned before a magistrate at 10:00 a.m. on July 21, was kept away from the courtroom by the F.B.I. until after he signed a second set of confessions, even though the courtroom was in the same building as the interrogation room. Hence, an attorney was appointed only after the statements were extracted from the appellant.

6. Equally so, it is clear and uncontested and supported by state medical records that within hours of the appellant signing the statements obtained by the F.B.I. and at the first opportunity, the jail infirmary had to examine the appellant, he was immediately admitted to the hospital for treatment of his heroin addiction. At no time did the F.B.I. agents or the local police (according to their own testimony) make any effort to determine whether the appellant was on drugs at the time he made the statements or whether the effects of any medication (to wit: heroin or methadone) affected the appellant's ability to freely and knowingly waive his right to remain silent.

7. There can be little doubt but that in the instant matter the signing of a confession was tantamount to entering a plea of guilty to said charges. No federal district court, including the

one involved in this matter, would accept a guilty plea, if at the time of ascertaining the voluntariness of the plea the court were of the opinion that said plea was made while the appellant was being influenced by drugs, including heroin. Barton v. United States, 458 F.2d 537, 543 (5th C.A. 1972).

8. This being the case, the F.B.I. agents and other law enforcement agents, knowing and admitting that the appellant had been heavily involved in drugs for several years up to the moment of his arrest, should have taken whatever steps were necessary to ascertain and ensure that any decisions by the appellant to waive his basic and fundamental rights including the right to remain silent and the right to counsel be free from the taint of influence of said drugs. This was not done. It is clear from the facts that arraignment and medical treatment were delayed until after the confessions were extracted from the appellant; the police and F.B.I. agents were more anxious to wrap up another case rather than they were to protect fundamental constitutional rights.

9. The law is clear that if the appellant, while suffering withdrawal symptoms asked for a doctor and it was conveyed to him that after he signed a statement one would become available and if because of that inducement the appellant made an inculpatory statement, there can be no question but that such a statement is involuntary. Hayes v. State of Washington, 373 U.S. 503; United States ex. rel. Collins v. Maroney, 287 F. Supp. 420, 422 (D.C. Penna. 1968).

10. It is obvious that the law as stated herein is relevant in the instant matter. The facts are undisputed that as soon as the appellant signed the statements on July 21, 1976, a doctor

was immediately made available to him, even though he had requested one earlier. On the 21st of July, after signing the second set of confessions, the appellant was immediately arraigned and within a few hours placed in a hospital for his heroin addiction. The appellant testified he signed the statements to get medical treatment. The totality of the circumstances dictate that statements given under these circumstances was coercion of a subtle but real nature.

11. The officers' and agents' testimony that the appellant did not exhibit signs of withdrawal belies the record and the opinions of state licensed medical personnel. (Copies of said medical records which were admitted into evidence and show the appellant was treated on the same days that he signed the statements are found in the appendix.) Furthermore, the agents and officers by their own testimony made no attempt to determine to what extent the appellant had consumed or was affected by narcotics at the time of the questioning which lasted for hours and seemed to cover all areas of possible criminal involvement. The reliability of any confession or admission obtained under these conditions is extremely suspect in light of the fact that a heroin addict will do anything, including lying, while suffering withdrawal

from heroin in order to quickly obtain medical help, according to Dr. Tonken; he has been treating this problem with prisoners for over thirty years. According to Dr. Tonken the appellant would receive no methadone until after he was arraigned. Since the appellant, as he viewed the F.B.I.'s conduct, was not going to be arraigned until a confession was extracted, the pressure to make a statement placed upon 19 year old boy with a very limited intelligence level smacks of coercion.

12. Because of the appellant's lack of education, physical pain, psychological duress, weakness by hunger, lack of sleep, questioning for hours, lack of contact with the outside world, absence of counsel, hostile police and F.B.I. agents interested in solving several crimes coupled with poor police procedure, any free choice which the appellant might otherwise have exhibited was "critically impaired." United States v. Arcediano, 371 F. Supp. 457 (D.C.N.J. 1974) The psychological pressure resulted in an involuntary confession. Lunumn v. State of Illinois, 372 U.S. 528 (1963); U.S. v. Lehman, 468 F.2d 93 (C.A. Ill. 1972.)

13. The courts gave the police the message before in how to deal with addicts during periods in

which they are undergoing withdrawal during interrogation. In U.S. v. Horden, 480 F.2d 649, 651 (C.A. 8th 1973,) the court suggested that when a person under interrogation indicates that he is an addict and that he is undergoing withdrawal from heroin, the officers should take the person to a hospital for examination. There is no reason why that could not have been done in the instant matter. It is clear from the evidence that there was a physician on call and available.

14. The facts and circumstances in the instant matter do not meet the standards set out by the United States Supreme Court for an intelligent and knowing waiver of fundamental constitutional rights. Boulden v. Holmar, 394 U.S. 498 (1969); Miranda v. Arizona, 384 U.S. 436, 475 (1966).

CONCLUSION

Wherefore, the appellant moves this Court to reverse the decision of the District Court and hold that any statement, whether made orally or written, obtained by law enforcement personnel or their agents on July 20 or July 21, 1975, be held inadmissible in criminal litigation against the appellant in that the methods employed to obtain said confessions violated appellant's constitutional rights.